

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 34095 of 2005(H)

AGAINST THE ORDER IN EP 6/2005. IN
OS.112/1997 of MUNSIF'S COURT, KOTTARAKKARA

.....

PETITIONERS:

1. SANTHOSH MATHEW, CHIRAPPURATHU VEEDU,
PULAMON MURI, KOTTARAKKARA VILLAGE.
2. ARJUNAN, CHARUVILA PUTHEN VEEDU,
KOTTARAKKARA MURI, KOTTARAKKARA VILLAGE.

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTIL

RESPONDENT:

MULAMOOTTIL FINANCE CORPORATION,
MULAMOOTTIL BUILDINGS, MARKET ROAD,
KOZHENCHERI, REPRESENTED BY ITS MANAGING PARTNER
JACOB THOMAS, MULAMOOTTIL, KOZHENCHERI MURI,
KOZHENCHERY VILLAGE.

BY ADV. SRI.V.PHILIP MATHEWS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.34095/05

APPENDIX

PETITIONERS' EXTS:

EXT.P1 - TRUE COPY OF OBJECTION FILED BY PETITIONERS IN EP.6/05 OF MUNSIFF'S COURT, KOTTARAKKARA.

EXT.P2 - TRUE COPY OF ORDER IN EP.6/05 DT.6.10.05.

EXT.P3 - TRUE COPY OF IP.9/05 FILED BY 1ST PETR. DT.14.11.05 BEFORE SUB COURT, KOTTARAKKARA.

EXT.P4 - TRUE COPY OF IP.8/05 FILED BY 2ND PETR. DT.14.12.05 BEFORE DO.

EXT.P5 - TRUE COPY OF EA.286/05 FILED BEFORE MUNSIFF, KOTTARAKKARA.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

.....
W.P.(C)No.34095 OF 2005
.....

DATED THIS THE 7th AUGUST, 2007

J U D G M E N T

Impugned in this Writ Petition under Article 227 is Ext.P2 order by which the learned Munsiff has found that the means of the judgment-debtors stands proved and has accordingly issued warrant for their arrest.

2. Heard Sri.Vinoy Varghese Kallummoottil, counsel for the petitioners and Sri.V.Philip Mathews, counsel for the respondent.

3. The learned counsel for the petitioners submitted that Ext.P2 order is not preceded by any enquiry into Ext.P1 objections and therefore the same is liable to be set aside and the court below is to be directed to hold an enquiry into the question as to whether the petitioners are having means sufficient for paying the decree-debt in a lump or at least a substantial portion thereof and also as to whether there has been wilful neglect on the part of the petitioners. It is obvious that Ext.P2 is not preceded by an enquiry as envisaged under Rule 40 of Order XXI of the Code of Civil Procedure. But it appears to me that there was no effective representation from the side of the petitioners on 6.10.2005, the day when the impugned order was passed. Therefore, I am inclined to set aside Ext.P2 and direct the

court below to hold an enquiry into the question whether the petitioners are having means and whether they have willfully neglected to pay the decree-debt only on putting the petitioners to terms.

4. Accordingly I set aside Ext.P2 and direct the court below to hold an enquiry into question of petitioners' liability to arrest under Section 51(e) of the Code, with liberty to the petitioners to substantiate the contentions raised through Ext.P1 by way of counter-evidence to the evidence which may be adduced by the decree-holder, on condition that the petitioners pay a sum of Rs.1000/- by way of costs to the respondent either directly or through their counsel in this Court within three weeks from today, failing which the impugned order will stand confirmed and the Writ Petition will stand dismissed. Once the cost is paid and the petitioners become entitled to the benefits of this judgment, the court below will commence the enquiry and pass fresh orders within a maximum period of three months of commencement of the enquiry.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

tgl

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